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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re K.O., et al., Persons Coming Under  
the Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,  
Plaintiff and Respondent,  
v.  
S.R.,  
Defendant and Appellant.

E063124

(Super.Ct.Nos. J247434,  
J247435 & J247436)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher  
Marshall, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal for Defendant and  
Appellant.

Jean-Rene Basle, County Counsel and Dawn M. Messer, Deputy County Counsel  
for Plaintiff and Respondent.

Three children entered the dependency system due to allegations of domestic  
violence between the parents, committed in their presence, and substance abuse.

Although they were returned to mother for a short time, they were removed again for similar reasons pursuant to a supplemental petition. (Welf. & Inst. Code, §§ 342, 387.)<sup>1</sup> By the time of the 18-month review hearing, mother had been arrested for physical abuse of a fourth child, who was born after dependency proceedings were initiated, and for being under the influence of controlled substances. Services were terminated and a hearing to terminate parental rights was set pursuant to section 366.26. In the meantime, a maternal cousin sought placement of the four children in a section 388 petition, but the petition was denied because the cousin's mother, the children's aunt, had a child welfare history and the cousin could not insure there would be no contact between the children and the aunt. At the section 366.26 hearing, parental rights were terminated. Mother appealed.

On appeal, mother argues there is insufficient evidence to support the court's finding that the children were adoptable because an adoptive home for the sibling group had not been identified. We affirm.

### **BACKGROUND**

In December 2012, K.O. (age 2), C.O. (age 5), and S.O. (age 6), came to the attention of the San Bernardino County Children and Family Services (CFS), after S.O. had begged for someone to call the police from the door of the home. The reporting party heard mother yelling at the children, threatening to beat them. When authorities arrived, one minor had a red, swollen face, but mother denied threatening to beat the children.

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<sup>1</sup> All further references are to the Welfare and Institutions Code unless otherwise specified.

When interviewed, the children all reported that the parents constantly engaged in domestic violence, which mother also denied, although the Sheriff's Office reported responding to the home four times during the previous six months. The father of the children was in jail for domestic violence. The children were afraid of father because he hit their mother on an ongoing basis, and they did not feel safe in the home when father was present. However, after father was released from jail, mother allowed him to return home and refused to work on a safety plan, so the children were detained.

On December 26, 2012, a dependency petition was filed alleging the parents' neglect and failure to protect the children due to domestic violence, substance abuse, and father's criminal and violent behavior, pursuant to section 300, subdivision (b). The jurisdictional and dispositional report submitted by the social worker recounted the violence in the home, the children's fear of their father, and mother's attitude, which minimized the domestic violence committed in the children's presence. Mother acknowledged a history of using methamphetamine up until seven years ago, and reported she had developmental disabilities relating to organic brain injury at birth, affecting her memory and rendering her blind in one eye.

The report also described the children's health. K.O. had been born with a hole in her heart<sup>2</sup> and tissue growing under the "matric<sup>3</sup> valve," which required surgical repair.

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<sup>2</sup> This is also known as a ventricular septal defect. (Taber's Cyclopedic Medical Dictionary, 20th ed. 2005, p. 2311.)

<sup>3</sup> We assume the social worker intended to say "mitral valve."

She also was delayed in her speech. C.O. and S.O. also suffered developmental delays related to their speech.

On January 17, 2013, the mother entered a no contest plea, but the court continued the jurisdictional hearing to complete notification under the Indian Child Welfare Act<sup>4</sup> (ICWA). On February 11, 2013, the social worker submitted additional information to the court, describing a recent incident of domestic violence, in which the parents engaged in a violent confrontation while mother was pregnant with her fourth child, and which required her hospitalization for a skull fracture. The unborn child was uninjured. On February 13, 2013, the court declared the children dependents of the court, removed them from the parents' custody, and ordered the parents to comply with a reunification plan.

Prior to the six-month status review, the social worker submitted a report recommending that the children be placed with mother on an extended visit under a family maintenance plan. Mother had participated in domestic violence classes and parenting education. Mother had given birth to her fourth child, B.O. in April 2013, and she demonstrated protective capacity by obtaining a restraining order against father, who was not serving a prison term for inflicting corporal injury on mother. The social worker recommended termination of father's services. The court conducted the contested six-month review hearing on September 5, 2013. The children were returned to the mother's custody under a plan of family maintenance, but father's services were terminated.

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<sup>4</sup> All the tribes eventually responded that the children were ineligible for tribal membership, so findings were made that ICWA did not apply.

On January 16, 2014, CFS filed a subsequent petition as to K.O. (§ 342) relating to mother's failure to follow through with treatment for the child's heart condition and a supplemental petition (§ 387) as to all three children due to domestic violence between mother and a boyfriend. Regarding the section 342 allegation, the social worker reported that mother had not filled the prescription for K.O.'s heart medicine for several months. Regarding the section 387 allegation, the social worker reported that mother allowed her boyfriend, who was on probation, to move in with her, but she denied he lived there to avoid a criminal background check. The boyfriend was abusive and had a gun that was kept in the residence. Additionally, mother admitted she was using methamphetamine again.

Mother and the four children were placed in a domestic violence shelter, but she left the shelter to return home, where her boyfriend was present. B.O. was found to have bruises of varying age and bite marks on her body. Mother denied abusing B.O. The children were re-detained.<sup>5</sup> On April 4, 2014, the court made true findings on the subsequent and supplemental petitions, and removed the children from mother's custody. The court approved a reunification plan for mother.

On June 11, 2014, the social worker submitted a status review report for the permanency hearing pursuant to section 366.22. This report noted that mother had been arrested on March 4, 2014 for criminal charges arising from the physical abuse of B.O., possession of controlled substances, and being under the influence of controlled

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<sup>5</sup> The youngest child, B.O., was also detained, but her case was on a different track pursuant to an original petition.

substances. Mother admitted abusing B.O. to a detective. Prior to her incarceration, her visits with the children were inconsistent and she had difficulty managing their behavior.

The children were placed together in the same home, where mother's aunt, Debra H., and her cousin, Stephanie H., visited regularly. The aunt and cousin had earlier sought consideration for placement of the four children, but had withdrawn their request due to the limited space in the home. Mother's sister, Lisa R., had also been eliminated from consideration for placement due to a failure to clear pending warrants, and the maternal grandmother could not be considered for placement due to health problems. The children had to be moved to a new placement in May 2014, so they were not currently in an adoptive home. However, according to a concurrent planning/adoption assessment filed on May 13, 2014, there were appropriate concurrent planning parents available for the siblings.

On June 20, 2014, the court terminated mother's services and set the matter for a section 366.26 hearing. On October 16, 2014, CFS filed a report for the section 366.26 hearing. All four children were placed together in an interim foster family agency home. The report included the assessment of maternal relatives for placement: the maternal grandmother was ruled out due to her health problems, which required a home health care aide to assist her in her daily activities. Mother's cousin Stephanie was again being assessed for placement.

In the opinion of the social worker, the children were appropriate for adoption due to their young age, good health, and the availability of a relative seeking a concurrent planning placement. The report acknowledged that the children had speech delays, and

that they were bonded to each other and to their foster parents. Prospective adoptive parents had not been identified.

On November 26, 2014, the matter was calendared for the section 366.26 hearing. The social worker submitted an addendum to the section 366.26 report addressing the status of the assessment of relatives for placement. Debra H. was not approved for placement of the children due to a criminal history.<sup>6</sup> The Relative Assessment Unit determined that Stephanie's home was approved "with an exception," involving a no-contact order precluding Stephanie's mother from living in the home or having contact with the children. Stephanie did not appear to be willing to abide by the no contact order. At the hearing, the court was informed that Stephanie was willing to abide by the no contact order. The court inquired about Debra's alleged criminal history, which Debra denied. The court ordered CFS to continue to assess Stephanie.

On January 7, 2015, maternal cousin Stephanie H. filed a Request to Change Court Order (Form JV-180), pursuant to section 388, in order to seek placement of the children. In response, CFS submitted a second addendum report opposing the proposed modification. Stephanie's home could not be approved without the condition that Debra H. have no contact with the children, and Stephanie H., who had vacillated in her requests to have the children placed with her, did not seem able or willing to protect the

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<sup>6</sup> The alleged criminal history was never disclosed. At a later date, it was explained that Debra H. had been removed as legal guardian of a teenager who had been placed in her care, after she had not participated in reunification services with respect to that minor in a separate dependency proceeding.

children from her mother. This report also noted that efforts to identify a concurrent planning home were under way and that there were numerous homes available.

On January 13, the court conducted the section 366.26 hearing.<sup>7</sup> The court denied Stephanie's section 388 petition. The court then found by clear and convincing evidence that the children were adoptable and terminated parental rights. Mother appeals.

### **DISCUSSION**

On appeal, mother argues that the judgment should be reversed because the juvenile court's finding that the children were adoptable is not supported by substantial evidence. CFS argues this issue was forfeited due to mother's failure to object to the finding at the hearing. However, a claim that there is insufficient evidence of adoptability at a contested hearing is not forfeited by failure to object in the juvenile court. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 399; *In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1560.)

We review the juvenile court's order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the children were likely to be adopted. (*In re Asia L.* (2003) 107 Cal.App.4th 498, 509-510.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we must uphold those findings. (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.) We give the court's adoptability finding the benefit of

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<sup>7</sup> The minute orders are confusing and are contradicted by the reporter's transcript insofar as the "corrected" minutes reflect that parental rights were terminated on October 20, 2014. On that date, the court merely confirmed the date for the contested hearing.



every reasonable inference and resolve any evidentiary conflicts in favor of the judgment of the trial court. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232.)

The issue of adoptability requires the court to focus on the child, and whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 733.) To be considered adoptable, a minor need not be in a prospective adoptive home and there need not be a prospective adoptive parent "waiting in the wings." (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 491, citing *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) Rather, what is required is clear and convincing evidence of the *likelihood* that adoption will be realized within a reasonable time. (*In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065.)

A child's membership in a sibling set is a relevant consideration in determining whether an *exception* to termination of parental rights exists (§ 366.26, subd. (c)(1)(B)(v); *In re I.I.* (2008) 168 Cal.App.4th 857, 872, [Fourth Dist, Div. Two]), or whether the child may be difficult to place for adoption. (§ 366.26, subd. (b)(3).) But the determination of adoptability is based on the individual. (*In re I.I.*, *supra*.) A child is generally adoptable when his or her personal characteristics are sufficiently appealing to make it likely that an adoptive family will be located in a reasonable time, regardless of whether a prospective adoptive family has been found. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.)

A child's relative youth, his or her good physical and emotional health, his or her intellectual capacity, and his or her ability to develop interpersonal relationships all indicate that a child is adoptable. (*In re Gregory A.*, *supra*, 126 Cal.App.4th at p. 1562.)

Thus, while the finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is “likely” that the child will be adopted within a reasonable time. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

Here, the social worker’s reports consistently indicated that the children were adoptable. The reports commented on their youth and good health. In addition, the evidence of a strong sibling bond, as well as a bond to their foster mother, support an inference that they have developed, and are capable of developing, interpersonal relationships. All have “normal cognitive endowment.” None of the children suffer from behavioral, emotional, or intellectual problems that would make placement difficult. The children have speech delays, for which they were provided speech therapy, and K.O. had a congenital heart condition, which was resolved with surgery, but there is no evidence they were considered to have “special needs,” or that their speech delays posed an impediment to adoption.

Mother points to the fact that the children are part of a sibling group, which would make sibling placement in an adoptive home difficult, relying upon *In re B.D.*, *supra*, 159 Cal.App.4th 1218. In that case, the sibling group consisted of five children. One child had behavior problems and was assessed in the borderline range of mental development. She had significant language deficits and displayed severe tantrums and defiance. (*Id.*, at p. 1223.) *B.D.* was diagnosed with a major depressive disorder, recurrent. (*Ibid.*) One other child had developmental delays and behavioral problems. (*Ibid.*) The social worker in that case indicated that it would not be easy to find a suitable adoptive home

for the children, but informed the court that a single family had expressed an interest in adopting a sibling group. (*Id.*, at p. 1233.) However, that family lacked a foster care license or an approved adoptive home study. (*Ibid.*) The reviewing court determined that the lack of a foster care license constituted a “legal impediment to adoption.” (*Ibid.*) The present case is easily distinguishable from *In re B.D.*, *supra*, where none of the children have behavioral or psychological problems and where numerous homes have already been approved, and where there is no “legal impediment to adoption.”

Nor do we find much guidance from the case of *In re I.I.*, *supra*, 168 Cal.App.4th 857, where the sibling group had been split up, with two children placed with an extended family member, while the other two were placed in the home of the caretaker’s sister. There, this court held that the behavioral problems of two of the children did not preclude a finding of adoptability. (*In re I.I.*, *supra*, at pp. 869-871.) We agree, but here there was no plan to split up the sibling group, so we need not consider that prospect.

None of the children in this case have behavioral, psychological, or intellectual problems. The social worker indicated there were numerous homes available for placement of the sibling group, which had already passed assessments and adoptive home studies. No evidence was presented that being part of a sibling group or having speech delays would be an impediment to finding an adoptive placement. There is substantial evidence to support the finding of adoptability.

#### **DISPOSITION**

The judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.